

*"[T]he notice requirement is effective today, March 10, 2005, even though the required notice has just been issued!"*

## **New Military Service Notice Requirement: Post it Now!**

By  
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The Veterans Benefits Improvement Act of 2004 ("VBIA") made a number of important changes to the laws governing employment and reemployment rights of members of the uniformed services. These include a change in the rules for continuing health insurance (granting a right to 24 months of continued coverage, rather than the previous right to 18 months of coverage) and a new notice requirement concerning the rights, benefits and obligations of those entitled to protection under the Uniformed Services Employment and Reemployment Rights Act of 2004 ("USERRA"), as well as the obligations of their employers. Notably, the notice requirement is effective today, March 10, 2005, even though the required notice has just been issued!

The Department of Labor ("DOL") was required to publish the required notice by today, March 10, 2005, and has just done so. Employers may satisfy the new notice requirement by posting the DOL-issued notice where employee notices are customarily placed. Alternatively, employers may deliver the notice in other ways that will minimize costs while ensuring that the full text of the notice is provided. The DOL has said acceptable alternatives to posting the notice include hand-delivering or mailing the notice, or distributing the notice by electronic mail. Presumably, these methods are acceptable only if they are likely to ensure receipt. In particular, it would probably be insufficient to mail a notice to the last known address for an employee if the employer knows that address is no longer valid. Similarly, providing notice by e-mail may be insufficient if the employer knows an employee never checks e-mail or no longer works at a location where he or she has access to e-mail.

If an employer chooses not to post the required notice, but will instead hand-deliver, mail, e-mail, or use another alternative method for providing notice, the employer should note that it is required to provide notice "to persons entitled to rights and benefits" under USERRA. This would include veterans and members of the Reserve and National Guard who otherwise meet the requirements for protection under USERRA.

Here is the text of the required notice (which you can also view in a poster pdf at <http://www.dol.gov/vets/programs/userra/poster.pdf>):

## YOUR RIGHTS UNDER USERRA

### THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

*"Employers may satisfy the new notice requirement by posting the DOL-issued notice where employee notices are customarily placed."*

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

#### REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- . you ensure that your employer receives advance written or verbal notice of your service;
- . you have five years or less of cumulative service in the uniformed services while with that particular employer;
- . you return to work or apply for reemployment in a timely manner after conclusion of service; and
- . you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

#### RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- . are a past or present member of the uniformed service;
- . have applied for membership in the uniformed service; or
- . are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- . initial employment;
- . reemployment;
- . retention in employment;
- . promotion; or
- . any benefit of employment.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

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The information in this newsletter is of a general nature only and does not constitute legal advice.

Consult your attorney for advice appropriate to your circumstances.

## HEALTH INSURANCE PROTECTION

. If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.

. Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

## ENFORCEMENT

. The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

. For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.

. If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.

. You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

**The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.**

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